



February 20, 2007

SENATE BILL No. 508

DIGEST OF SB 508 (Updated February 14, 2007 2:42 pm - DI 106)

Citations Affected: IC 11-8; IC 34-30; IC 35-41.

Synopsis: Electrified perimeter fences at prisons. Authorizes the department of correction to install an electric perimeter fence system capable of delivering a lethal electrical shock at medium or maximum security facilities to prevent the escape of offenders detained in the facilities. Specifies that an electric perimeter fence system must be sandwiched between two conventional fences and designed to minimize the danger to wildlife. Provides civil immunity for a contractor hired by the department to install, operate, or maintain an electric perimeter fence system based in an injury suffered by a person confined in the correctional facility.

Effective: July 1, 2007.

Waterman, Steele

January 23, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 19, 2007, amended, reported favorably — Do Pass.

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SB 508—LS 7615/DI 106+



February 20, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 508

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-8-2-5, AS AMENDED BY P.L.246-2005,
2 SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 5. (a) The commissioner shall do the following:

4 (1) Organize the department and employ personnel necessary to
5 discharge the duties and powers of the department.

6 (2) Administer and supervise the department, including all state
7 owned or operated correctional facilities.

8 (3) Except for employees of the parole board, be the appointing
9 authority for all positions in the department within the scope of
10 IC 4-15-2 and define the duties of those positions in accord with
11 IC 4-15-2.

12 (4) Define the duties of a deputy commissioner and a
13 superintendent.

14 (5) Accept committed persons for study, evaluation,
15 classification, custody, care, training, and reintegration.

16 (6) Determine the capacity of all state owned or operated
17 correctional facilities and programs and keep all Indiana courts

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1 having criminal or juvenile jurisdiction informed, on a quarterly
2 basis, of the populations of those facilities and programs.

3 (7) Utilize state owned or operated correctional facilities and
4 programs to accomplish the purposes of the department and
5 acquire or establish, according to law, additional facilities and
6 programs whenever necessary to accomplish those purposes.

7 (8) Develop policies, programs, and services for committed
8 persons, for administration of facilities, and for conduct of
9 employees of the department.

10 (9) Administer, according to law, the money or other property of
11 the department and the money or other property retained by the
12 department for committed persons.

13 (10) Keep an accurate and complete record of all department
14 proceedings, which includes the responsibility for the custody and
15 preservation of all papers and documents of the department.

16 (11) Make an annual report to the governor according to
17 subsection (c).

18 (12) Develop, collect, and maintain information concerning
19 offenders, sentencing practices, and correctional treatment as the
20 commissioner considers useful in penological research or in
21 developing programs.

22 (13) Cooperate with and encourage public and private agencies
23 and other persons in the development and improvement of
24 correctional facilities, programs, and services.

25 (14) Explain correctional programs and services to the public.

26 (15) As required under 42 U.S.C. 15483, after January 1, 2006,
27 provide information to the election division to coordinate the
28 computerized list of voters maintained under IC 3-7-26.3 with
29 department records concerning individuals disfranchised under
30 IC 3-7-46.

31 (b) The commissioner may:

32 (1) when authorized by law, adopt departmental rules under
33 IC 4-22-2;

34 (2) delegate powers and duties conferred on the commissioner by
35 law to a deputy commissioner or commissioners and other
36 employees of the department;

37 (3) issue warrants for the return of escaped committed persons (an
38 employee of the department or any person authorized to execute
39 warrants may execute a warrant issued for the return of an
40 escaped person); ~~and~~

41 **(4) authorize the installation of an electric perimeter fence**
42 **system at a medium or maximum security facility in**

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1 **accordance with IC 11-8-9; and**

2 ~~(4)~~ **(5)** exercise any other power reasonably necessary in
3 discharging the commissioner's duties and powers.

4 (c) The annual report of the department shall be transmitted to the
5 governor by September 1 of each year and must contain:

6 (1) a description of the operation of the department for the fiscal
7 year ending June 30;

8 (2) a description of the facilities and programs of the department;

9 (3) an evaluation of the adequacy and effectiveness of those
10 facilities and programs considering the number and needs of
11 committed persons or other persons receiving services; and

12 (4) any other information required by law.

13 Recommendations for alteration, expansion, or discontinuance of
14 facilities or programs, for funding, or for statutory changes may be
15 included in the annual report.

16 SECTION 2. IC 11-8-9 IS ADDED TO THE INDIANA CODE AS
17 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
18 1, 2007]:

19 **Chapter 9. Electric Perimeter Fence System**

20 **Sec. 1. As used in this chapter, "electric perimeter fence system"**
21 **means a high voltage electric security fence that is:**

22 (1) designed to prevent the escape of a person detained in a
23 correctional facility; and

24 (2) capable of delivering a lethal electrical shock.

25 **Sec. 2. The superintendent may install an electric perimeter**
26 **fence system at a maximum or medium security facility in**
27 **accordance with rules adopted by the department under section 3**
28 **of this chapter.**

29 **Sec. 3. If the superintendent elects to install an electric**
30 **perimeter fence system, the department shall adopt rules under**
31 **IC 4-22-2 concerning the installation and operation of the electric**
32 **perimeter fence system. Rules adopted under this section must**
33 **provide the following:**

34 (1) The electric perimeter fence system must be placed
35 between two (2) nonelectric fences in a manner that prevents
36 an individual from contacting the electric perimeter fence
37 system unless the person has crossed a nonelectric fence.

38 (2) The electric perimeter fence system must be designed to
39 minimize the danger to wildlife.

40 **Sec. 4. A contractor hired by the department to install, operate,**
41 **or maintain an electric perimeter fence system is immune from**
42 **civil or criminal liability for an injury to a person detained in a**

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1 **correctional facility based on an act or omission of any person**
 2 **relating to the installation, operation, or maintenance of the**
 3 **electric perimeter fence system unless the contractor engaged in**
 4 **gross negligence or willful or wanton misconduct.**

5 SECTION 3. IC 34-30-2-39.7 IS ADDED TO THE INDIANA
 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2007]: **Sec. 39.7. IC 11-8-9-4 (Concerning a**
 8 **contractor hired by the department to install, operate, or maintain**
 9 **an electric perimeter fence system).**

10 SECTION 4. IC 35-41-3-3 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) A person other
 12 than a law enforcement officer is justified in using reasonable force
 13 against another person to effect an arrest or prevent the other person's
 14 escape if:

- 15 (1) a felony has been committed; and
- 16 (2) there is probable cause to believe the other person committed
- 17 that felony.

18 However, such a person is not justified in using deadly force unless that
 19 force is justified under section 2 of this chapter.

20 (b) A law enforcement officer is justified in using reasonable force
 21 if the officer reasonably believes that the force is necessary to effect a
 22 lawful arrest. However, an officer is justified in using deadly force only
 23 if the officer:

- 24 (1) has probable cause to believe that that deadly force is
- 25 necessary:
- 26 (A) to prevent the commission of a forcible felony; or
- 27 (B) to effect an arrest of a person who the officer has probable
- 28 cause to believe poses a threat of serious bodily injury to the
- 29 officer or a third person; and
- 30 (2) has given a warning, if feasible, to the person against whom
- 31 the deadly force is to be used.

32 (c) A law enforcement officer making an arrest under an invalid
 33 warrant is justified in using force as if the warrant was valid, unless the
 34 officer knows that the warrant is invalid.

35 (d) A law enforcement officer who has an arrested person in custody
 36 is justified in using the same force to prevent the escape of the arrested
 37 person from custody that the officer would be justified in using if the
 38 officer was arresting that person. However, an officer is justified in
 39 using deadly force only if the officer:

- 40 (1) has probable cause to believe that deadly force is necessary to
- 41 prevent the escape from custody of a person who the officer has
- 42 probable cause to believe poses a threat of serious bodily injury

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1 to the officer or a third person; and

2 (2) has given a warning, if feasible, to the person against whom
3 the deadly force is to be used.

4 (e) A guard or other official in a penal facility or a law enforcement
5 officer is justified in using reasonable force, including deadly force, if
6 the officer has probable cause to believe that the force is necessary to
7 prevent the escape of a person who is detained in the penal facility.

8 **(f) The department of correction may install and operate an**
9 **electric perimeter fence system in accordance with IC 11-8-9 to**
10 **prevent the escape of a person detained in a penal facility.**

11 ~~(g)~~ (g) Notwithstanding subsection (b), (d), or (e), a law enforcement
12 officer who is a defendant in a criminal prosecution has the same right
13 as a person who is not a law enforcement officer to assert self-defense
14 under ~~IC 35-41-3-2~~ **section 2 of this chapter.**

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SENATE MOTION

Madam President: I move that Senator Steele be added as second author of Senate Bill 508.

WATERMAN

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 508, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 42, after "liability" insert "**for an injury to a person detained in a correctional facility**".

and when so amended that said bill do pass.

(Reference is to SB 508 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 5, Nays 3.

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